value; and until lately there has not been much dispute as to what was meant by the phrase "actual cost." This was generally held to include the cash sums paid for land and construction, the actual and reasonable cost of supervision and other "overhead" expenditures upon the property, and interest during construction. Recently, however, avaricious claimants have attempted to swell, often to the doubling point, the "actual cost" of the property by including such items of expenditure as incidental costs of financing the company. All these expenditures were held by the Circuit Court of Appeals in the *Canal* case to have been improperly admitted in evidence. The court, however, considered that what are sometimes termed "development costs," meaning the expenses incurred in creating the business and revenue of the enterprise, may be considered as an item or factor in the "going value" of the property, provided the enterprise was a profitable one or there was a reasonable probability that it would become so.

It will be seen that the decision under consideration will, if followed by other courts and by Public Service Commissions, tend very much to simplify the processes of property valuation, which were in great danger of becoming too complicated, and of resulting in figures which are neither sensible nor just.

The unanimous decision of the Circuit Court of Appeals in the *Canal* case was not appealed to the United States Supreme Court. It will, therefore, remain as a far-reaching and authoritative discussion of some of the most important questions in the law of valuation.

N. M.

PROTECTING A MARRIED WOMAN'S INTEREST IN HOMESTEAD PROPERTY. —It is a sensible rule of statutory interpretation, formerly adopted perhaps too reluctantly by the courts,[1] that the general purpose of a statute, and not merely its express terms, should be given effect.[2] Especially is this true when a statute is remedial in nature.[3] The extent to which many courts are willing to apply this rule is found in their attitude toward a common provision of the homestead laws, to the effect that a deed conveying homestead property shall be valid only if signed by both husband and wife.[4] It is clear that with such a statute in force a contract executed only by the husband cannot be specifically enforced against an unwilling wife,[5] since this would defeat the plain meaning of the

[1] For an admirable criticism of the failure of the courts to give full effect to the intent of the legislature, see Dean Pound's article, "Common Law and Legislation," 21 HARV. L. REV. 383.

[2] See DWARRIS, TREATISE ON STATUTES, Potter's ed., 202–212; SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION, 2 ed., § 240.

[3] Shea *v.* Peters, 230 Mass. 197, 119 N. E. 746 (1918). See BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS, 2 ed., 487. As to the extent that homestead statutes should be liberally construed as being remedial, see WAPLES, HOMESTEAD AND EXEMPTION, 28.

[4] "No conveyance, mortgage, or other instrument affecting the homestead of any married man shall be of any validity, except for taxes, laborers' and mechanics' liens, and the purchase money, unless his wife joins in the execution of such instrument and acknowledges the same." C. & M. ARK. DIGEST, § 5542. See WAPLES, *op. cit.*, 955.

[5] Mundy *v.* Shellaberger, 161 Fed. 503 (8th Circ., 1908). A similar question arises when a wife refuses to release dower. An early case decreed specific performance in

statute. A recent Arkansas case,[6] following the weight of authority,[7] goes further and holds the contract entirely void as against the policy of the statue,[8] so that the husband is not even liable for its breach. There is much authority, however, *contra*,[9] and the arguments against holding the contract void cannot be ignored.

The purpose of the homestead statutes is not charity but rather the protection of the home.[10] Whether rich or poor, the family is protected only if, and to the extent that, it owns homestead property. And since the wife can at all events prevent the homestead from being alienated,[11] the argument is not without weight that the effect of the obligation of the husband to pay damages for the breach of his contract is not unlike that of any other obligation of the husband in its influence on the wife to allow the property to be sold. In any case the alternatives, theoretically at least, are either to dispose of the homestead, getting or retaining less than it is worth, or to lose a like amount[12] from other property of the husband.[13] Obviously the homestead laws do not require that all losing contracts of the husband be held void and on this reasoning there is no basis for a distinction between them. Another argument not entirely unsound is based on the marital right of the husband at common law to determine the family residence.[14] It seems clear that the policy of the homestead law does not infringe upon this fundamental common law right.[15] The result is that by an abandonment of the homestead by the husband,[16] if made in good faith, the wife may be

such a case. Hall *v.* Hardy, 3 Peere Williams, 187 (1733). But it is well settled to-day that such a decree will not be issued. Peeler *v.* Levy, 26 N. J. Eq. 330 (1875); Reisz's Appeal, 73 Pa. St. 485 (1873).

[6] Ferrell *v.* Wood, 232 S. W. 577 (1921). For the facts of this case see RECENT CASES, *infra*, p. 88.

[7] Thimes *v.* Stumpff, 33 Kan. 53, 5 Pac. 431 (1885); Weitzner *v.* Thingstad, 55 Minn. 244, 56 N. W. 817 (1893); Lichty *v.* Beale, 75 Neb. 770, 106 N. W. 1018 (1906); Mundy *v.* Shellaberger, 161 Fed. 503 (8th Circ., 1908).

[8] On strict principles of contract the husband is clearly liable in damages. Damages will arise for a breach of a contract to convey land over which the obligor had no power of disposition at the time of the contract. Carr *v.* Dooley, 19 Misc. 553, 43 N. Y. Supp. 399 (1897). Likewise for a failure to procure a release of dower. Drake *v.* Baker, 34 N. J. L. 358 (1871).

[9] White *v.* Bates, 234 Ill. 276, 84 N. E. 906 (1908); Wainscott *v.* Haley, 185 Mo. App. 45, 171 S. W. 983 (1914). See 23 HARV. L. REV. 65; SMYTH, HOMESTEAD AND EXEMPTIONS, § 451.

[10] See WAPLES, HOMESTEAD AND EXEMPTION, 3–5, 36–38.

[11] For a review of the various exemption provisions of the homestead laws, see WAPLES, *op. cit.*, 955.

[12] This assumes that the measure of damages would be the difference between the value of the land and the contract price, which would not be true in all jurisdictions. See 3 SEDGWICK, DAMAGES, 9 ed., §§ 1009–1012.

[13] For example, it may be supposed that the value of the homestead is $2000 and the husband contracted to sell it for $1500. The contract may be carried out and $1500 realized, or the obligation arising from its breach may be satisfied from other property worth $500. In case of any other obligation of the husband for $500, the homestead may be sold and after paying this debt, $1500 will remain, or the debt may again be satisfied from other property worth $500.

[14] See SCHOULER, DOMESTIC RELATIONS, 5 ed., § 38.

[15] Brown *v.* Coon, 36 Ill. 243 (1864); Farmers' Building and Loan Assn. *v.* Jones, 68 Ark. 76, 56 S. W. 1062 (1900). See THOMPSON, HOMESTEAD AND EXEMPTION LAWS, § 276.

[16] As to what constitutes abandonment of the homestead, see THOMPSON, *op. cit.*, §§ 263–287.

divested of her rights therein, probably by a mere change of residence,[17] but at least by the acquisition of another homestead.[18] A husband might accordingly by such abandonment be enabled to carry out his contract to sell the homestead without doing anything contrary to the policy of the statute.

But looking at actualities rather than theoretical arguments, as the court must in considering the effect of the policy of the statute, it is fully justified in holding the contract void. There is a practical difference between an obligation to pay money arising from the breach of the husband's contract to convey the homestead, and the obligations arising from other losing contracts of the husband. Here the obligation would arise from the wife's refusal to carry out her husband's wishes. And, in such circumstances, the prospect of material loss is by no means the most potent influence impelling her to agree to the conveyance. For not only would she shun the publicity which a damage suit would give such domestic discord, but she would also wish to avoid the reproaches of a disgruntled husband complaining that her stubbornness had turned a seemingly good bargain into a liability for damages.

Nor is the argument that the husband may fulfill his contract by abandoning and then conveying the homestead by any means conclusive. Just what may be the effect, under varying conditions, of abandonment of the homestead by the husband without the wife's consent is not clear on the authorities.[19] But just as the common law placed limits on the husband's right to determine the family residence,[20] so there are obviously cases where the policy of the Homestead Act will not allow a mere purported abandonment in utter disregard of the family's welfare to deprive the wife of her interest.[21] So here again the wife's consent would be essential to the performance of the contract. Moreover it is these cases, where a shiftless and irresponsible husband, or a husband bent on speculation, contemplates not merely an abandonment of the homestead but a virtual abandonment of the family, that constitute the real menace to the policy of the homestead laws. They should, therefore, be of the greatest weight in determining the attitude of the courts on the husband's contracts, and justify holding those contracts void.

RIGHTS OF THE TRUSTEE IN BANKRUPTCY UNDER MODERN LIFE INSURANCE POLICIES. — The disposition of life insurance policies upon the bankruptcy of the insured has long been a source of confusion in the

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[17] Brennan *v.* Wallace, 25 Cal. 108 (1864); Stewart *v.* Pritchard, 101 Ark. 101, 141 S. W. 505 (1911).

[18] A recent case apparently holds that a new homestead must be acquired to defeat the wife's right in the former homestead if she does not consent to the abandonment. Fisher *v.* Gulf Production Co., 231 S. W. 450 (Tex. Civ. App. 1921). And in the following cases where no new homestead had been acquired, it was held that the wife's rights were not lost. Blumer *v.* Allbright, 64 Neb. 249, 89 N. W. 809 (1902); Collins *v.* Boyett, 87 Tenn. 334, 10 S. W. 512 (1889).

[19] See cases cited in notes 17 and 18.

[20] Powell *v.* Powell, 29 Vt. 148 (1856); Gleason *v.* Gleason, 4 Wis. 64 (1855).

[21] Collins *v.* Boyett, 87 Tenn. 334, 10 S. W. 512 (1889). See WAPLES, HOMESTEAD AND EXEMPTION, 582.